

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Petition for Rulemaking to Amend the</b>	)	
<b>Commission's Rules Governing</b>	)	<b>MB Docket No. 10-71</b>
<b>Retransmission Consent</b>	)	
	)	
	)	

**COMMENTS OF STARZ ENTERTAINMENT, LLC  
IN SUPPORT OF PETITION FOR RULEMAKING**

Starz Entertainment, LLC ("Starz") submits these comments in support of the "Petition For Rulemaking" ("Petition"), filed jointly on March 9, 2010, by a number of cable television, direct broadcast satellite, and telephone/IPTV operators (including, inter alia, Time Warner Cable Inc., DISH Network LLC, and Verizon), as well as by a number of public interest groups (including, inter alia, Public Knowledge and New America Foundation) (collectively, "Petitioners"). On March 19, 2010, the Commission released a Public Notice seeking comment on the Petition, which requested that the Commission amend and supplement its retransmission consent rules. Starz supports the Petitioners' request that the Commission institute a rulemaking proceeding to amend and supplement the Commission's retransmission consent rules by prohibiting the tying of retransmission consent to the coverage of non-broadcast programming networks.

Starz is one of the largest providers of video programming networks to cable, satellite, and telephone company distributors. Starz provides sixteen different programming networks, including the Starz channel and its five multiplex channels, the Encore channel and its six multiplex channels, MoviePlex, IndiePlex, and RetroPlex, most of which are available in both standard definition and high definition feeds. Starz also offers the subscription video on demand services Starz On Demand, Encore On Demand, and MoviePlex On Demand. Starz not only distributes its content through traditional terrestrial and satellite technologies, but also through broadband services Starz Online and Encore Online that are or will be featured in several distributors' "TV Everywhere" offerings. Starz's video programming services generally feature full length, theatrically released motion pictures, as well as original series and entertainment specials.

## **I. Introduction**

The Commission's retransmission consent regulations, 47 C.F.R. §§76.64-65, along with the related "must carry" rules, were adopted by the Commission to effectuate provisions added to the Communications Act by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). This conjoined must carry/retransmission consent regime provides that, in three year cycles, broadcast stations may elect either that their signals be carried by multichannel video programming distributors ("MVPDs") in their markets without compensation pursuant to "must carry" requirements, or that such

local MVPDs negotiate with local broadcasters for the financial and other terms under which they may carry the broadcasters' signals to their subscribers. If a broadcast station elects retransmission consent, it may seek compensation from the local MVPD in return for consent that their "free" broadcast signals be retransmitted to such MVPD's local subscribers.

As the Petitioners note at pages 20-24 of the Petition, over the past two decades, the retransmission consent structure increasingly has led to serious disruptions in the provision of local broadcast signals to MVPDs' customers. Recognizing the MVPD subscribers' demand for local broadcast services on the distributors' systems, broadcasters not only have demanded high compensation for this critical broadcast television programming, but also have used their unusual leverage to obtain carriage advantages for their other non-broadcast networks. For example, the Fox Television broadcast station group has used its leverage from withholding retransmission consent for carriage of its local television stations to extract carriage commitments and advantageous positioning of their non-broadcast Fox Movie Network and f/x channels on MVPDs' systems. Similarly, Viacom used its local CBS station ownership leverage to extract carriage and positioning advantages for many non-broadcast networks, such as MTV and VH1 that previously were commonly owned. As Petitioners note at page 34 of their Petition, each of the "big four" broadcast network station groups owns a long list of major cable networks, and the retransmission consent negotiations now involve requirements that MVPDs purchase these non-broadcast channels as part of a

package that includes retransmission consent for the network's owned and operated broadcast stations.

The Petitioners present two central proposals for reforming the retransmission consent process. First, Petitioners suggest that the Commission amend its rules to create one or more dispute resolution mechanisms to protect consumers from unreasonably high retail prices, such as compulsory arbitration or a similar process. Second, Petitioners request that the Commission amend the retransmission consent rules to prohibit broadcast station owners from "tying" retransmission consent for their local broadcast stations with the sale of other non-broadcast programming services, including web-based content.

Starz supports Petitioners' request to reexamine and overhaul the retransmission consent regulations. While Starz does not have a direct interest in the particular dispute resolution mechanism adopted, Starz does generally support the Petitioners' contention that the retransmission consent structure skews the negotiations between local broadcasters and MVPDs in a manner that tends to increase artificially consumer prices for cable service. The net result is that consumers are paying higher prices.

Regardless of the dispute resolution mechanism that is adopted, Starz does strongly believe that there is a critical need to prohibit the "tying" of broadcast retransmission consent to MVPDs' carriage of non-broadcast cable networks. Such tying of negotiations distorts the otherwise very competitive cable network marketplace and unfairly and unjustifiably favors those cable networks co-owned

with local television broadcast stations over those, such as the Starz networks, that have no broadcast ownership relationship.

## **II. Tying of Retransmission Consent for Broadcast Stations to Carriage of Non-Broadcast Networks Skews the Competitive Marketplace and Harms Consumer Choice**

Petitioners assert that prohibiting mandatory tying practices is essential for the viability of their requested dispute resolution structure because such tying with non-broadcast channels would undermine the Commission's oversight of the reasonableness of retransmission consent fees through such dispute resolution mechanism. Petitioners state that the Commission should amend Section 76.65 of the Commission's Rules to clarify that it is a per se violation of a broadcaster's "good faith" negotiating obligations to insist on tying retransmission consent to negotiations for carriage of other non-broadcast programming services. Petitioners request that the Commission make clear that retransmission disputes will involve only stand-alone agreements for broadcast signals. Petitioners state further that "Broadcasters must no longer be permitted to exploit their many government-granted preferences that preclude normal market-based negotiations to force MVPDs to carry non-local cable programming." Petition at 35.

Starz maintains that the "tying" of retransmission consent for broadcast stations to carriage of other non-broadcast channels should be prohibited regardless of the dispute resolution mechanism. Petitioners are certainly correct that it would be practically impossible to have any such arbitration include consideration of non-

regulated national cable networks. However, the practice of tying a broadcaster's retransmission consent to carriage of commonly owned cable networks is a major disruption in the market for cable networks, and should be prohibited even if no dispute resolution mechanism is adopted. Tying of broadcast and cable network negotiations, with broadcast stations having the added leverage of governmental retransmission consent, provides an unfair advantage to those cable networks that have common broadcast station ownership.

The cable program network marketplace is highly competitive. There is intense competition among cable networks for limited channel capacity, positioning in tiers and packages of cable services, marketing and consumer sales opportunities and license fees. Even with the growth and pervasiveness of digital cable, channel capacity is still limited, and available cable networks far outnumber available channels even on the most advanced systems. Even though Starz's channels are generally premium movie networks, Starz competes directly and continually with other expanded basic, digital tier, and premium networks for that limited channel capacity on each MVPD's system. In addition, Starz competes with other networks for placement in higher or lower penetrated digital tiers and packages and in single premium and multi-premium packages. Starz also competes aggressively against other networks to participate in cable system marketing opportunities and consumer campaigns. Regardless of when carriage contracts begin and end, cable networks such as Starz and Encore are continually negotiating with MVPDs over the number of

channels to be carried, the tiers or packaging for such channels, and marketing campaigns to feature their respective services. We compete for consumers' attention as well, but our first and foremost competition is with other cable networks, for distribution and marketing opportunities with MVPDs.

The present regulation creates a two-class system in the negotiations with MVPDs. Those cable networks whose negotiations with MVPDs include retransmission consent for local broadcast channels are given priority in the negotiation process, with a distinct competitive advantage over those cable networks that have no relationship to local broadcast stations. The cable networks owned by broadcast interests exploit the added leverage granted to them through governmentally-enforced retransmission consent to gain an unfair, governmentally-enhanced competitive advantage over those cable networks not associated with broadcast stations. Broadcaster-owned cable networks gain considerable competitive leverage due to the regulatory restrictions and advantages of retransmission consent. The combination of government-protected broadcast stations with cable networks in the same negotiations skews the otherwise unregulated cable network marketplace to the distinct advantage of such broadcast station-cable network co-owners. This unintended consequence of retransmission consent disrupts what is otherwise a very competitive cable programming marketplace, to the unfair advantage of the common broadcast station-cable network owners.

Consumers are harmed by this distortion of competition. Decisions as to which cable program networks will be carried by MVPDs are not based on the merits, popularity, or quality of the various cable program networks, but rather in the first instance by whether or not the cable networks are owned by broadcasters which can leverage their retransmission consent rights. Starz repeatedly has been advised by MVPDs that decisions for carriage of our own new channels are subject to how much channel capacity is left over after their retransmission consent negotiations with broadcasters are finished and their commitments for other new broadcaster-owned channels are made for retransmission consent for critical local market broadcast stations. The MVPDs' carriage decisions are skewed toward those cable channels that are owned by broadcasters, regardless of consumer preferences. Thus, even if the Commission does not adopt a dispute resolution mechanism to help control retransmission battles, the Commission should prohibit the tying of retransmission consent to carriage of non-broadcast cable networks so that carriage decisions are made on the basis of value and demand -- for the benefit of consumers, rather than for the benefit of broadcast station owners.

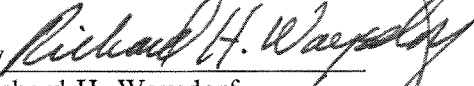


### III. Conclusion

For these reasons, Starz urges the Commission to institute a rulemaking proceeding to change and improve the retransmission consent regulations. Starz believes that the Commission should adopt rules proposed by Petitioners to prohibit the tying of retransmission consent for broadcast stations to MVPD carriage of the broadcasters' other non-broadcast cable networks. This will restore fair competition between broadcast-owned and independent programming networks to the benefit of viewers.

Respectfully submitted,

STARZ ENTERTAINMENT, LLC

By 

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